

TRANSCRIPT OF PROCEEDINGS

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

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In the Matter of:

Patrick Sullivan & Lake Broadcasting, Inc.

MB Docket No. 14-82

Application for Consent to Assignment of License
of FM Translator Station W238CE, Montgomery,
Atlanta

ORIGINAL

DATE OF HEARING: June 24, 2014 VOLUME: 1

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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

IN THE MATTER OF:	:	MB Docket No.
	:	14-82
PATRICK SULLIVAN	:	
(Assignor)	:	FRN 0003749041,
	:	0006119796,
and	:	0006149843,
	:	0017196064
LAKE BROADCASTING, INC.	:	
(Assignee)	:	Facility ID No.
	:	146162
Application for Consent to	:	
Assignment of License of FM:	:	File No. BALFT-
Translator Station W238CE,	:	20120523ABY
Montgomery, Alabama	:	
	:	

Tuesday,
June 24, 2014

Federal Communications Commission
445 12th Street, SW
Hearing Room A
Washington, D.C. 20554

The above-entitled matter came on for
hearing, pursuant to notice, at 10:00 a.m.

BEFORE:

THE HONORABLE RICHARD L. SIPPEL,
Administrative Law Judge

APPEARANCES:On Behalf of Patrick Sullivan and Lake
Broadcasting, Inc.:

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On Behalf of The Federal Communications
Commission:

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ALSO PRESENT:

MARY GOSSE, Clerk
AUSTIN RANDAZZO, Attorney-Advisor

P-R-O-C-E-E-D-I-N-G-S

9:59 a.m.

JUDGE SIPPEL: This is the pre-hearing conference for MB Docket No. 1482. The hearing designation order was released May 23rd of this year.

Appearing for the Bureau?

MR. SCHONMAN: Good morning, Your Honor. My name is Gary Schonman. I'm appearing today on behalf of the Chief Enforcement Bureau, also on behalf of my colleague, William Knowles-Kellett, who is the Counsel of record, but had a scheduling conflict and couldn't be here today.

JUDGE SIPPEL: Well, how many hearings do we have in this place?

MR. SCHONMAN: Well, we have several hearings in various stages. And, he has a conflict.

JUDGE SIPPEL: All right. Well, that's all right. You are as capable as any, more so, perhaps, in some sense. So, we'll work with what we have.

Mr. Jacobs?

MR. JACOBS: Good morning, Your Honor.

JUDGE SIPPEL: Good morning.

1 MR. JACOBS: I'm appearing on behalf of
2 Patrick Sullivan and Lake Broadcasting, Inc., the
3 proposed seller and buyer of an FM translator
4 station.

5 JUDGE SIPPEL: All right. And, how
6 about the -- the assignee would Lake
7 Broadcasting.

8 MR. JACOBS: Yes.

9 JUDGE SIPPEL: Your client would be the
10 prospective purchaser.

11 MR. JACOBS: It's, actually, both,
12 because --

13 JUDGE SIPPEL: I thought so.

14 MR. JACOBS: -- the assignor, Mr.
15 Sullivan, is the nominal lead party.

16 JUDGE SIPPEL: Okay. Okay.

17 And, Patrick Sullivan is not -- nobody
18 has appeared for Patrick Sullivan. I wasn't
19 expecting to have anybody appear for him.

20 MR. JACOBS: No. I'm representing both
21 parties.

22 JUDGE SIPPEL: Okay. That being
23 Sullivan also?

24 MR. JACOBS: Yes.

25 JUDGE SIPPEL: Okay. So, Sullivan,

1 Lake and Mr. Rice.

2 MR. JACOBS: Right.

3 JUDGE SIPPEL: Okay.

4 MR. JACOBS: Mr. Rice is the President
5 of Lake Broadcasting, Inc.

6 JUDGE SIPPEL: Okay. Okay. All right.
7 And, it's the conduct of Mr. Lake.

8 MR. JACOBS: Mr. Rice.

9 JUDGE SIPPEL: -- Mr. Rice, that is
10 the subject of the hearing designation order.

11 MR. JACOBS: That's correct.

12 JUDGE SIPPEL: Do you agree with that,
13 Mr. Schonman?

14 MR. SCHONMAN: Yes, sir, I do.

15 JUDGE SIPPEL: Okay. All right.

16 I issued a pre-hearing order on June
17 18th, I mean, actually, it's over and above the
18 first pre-hearing order, it's the second order,
19 listing things that we wanted to talk about
20 today, that I did.

21 Now, before I start, though, is there
22 anything -- is there any development in the case
23 Is there anything I should know about before we
24 start with this?

25 No?

1 MR. SCHONMAN: No. Mr. Jacobs and I
2 have been speaking, along with William Knowles-
3 Kellett, about proceeding along with discovery
4 and all. And, I have to say our conversations
5 have been very amicable and productive.

6 JUDGE SIPPEL: Good. Are you agreeing
7 pretty much about the scope of discovery?

8 MR. JACOBS: Well, we'll see.

9 JUDGE SIPPEL: Okay. All right, that's
10 good enough. That's fair enough. All right.

11 Well, the first item here is
12 description of the evidence which you intend to
13 put on, and this question of rehabilitation. I
14 mean, there's really two issues, rehabilitation
15 and reliability as to truthfulness. I'm trying
16 to narrow things as quickly as, you know, not to
17 waste a lot of time with this. I've spent a lot
18 of time on this, but please clarify if I'm
19 getting too abrupt.

20 What evidence would you plan to put on
21 with respect to rehabilitation?

22 MR. JACOBS: A description of the
23 various activities that Mr. Rice has been
24 involved in, especially, since he left prison at
25 the end of 1999.

1 JUDGE SIPPEL: Right. So, that's a big
2 chunk of time.

3 MR. JACOBS: Yes. And, plenty of time
4 for him to be involved in anything from tower
5 rentals, to engineering assistance to people, to
6 operating an LMA, where you provide the
7 programming to a radio station.

8 JUDGE SIPPEL: What's an LMA?

9 MR. JACOBS: Local Marketing Agreement.

10 JUDGE SIPPEL: Okay. And, that would
11 be -- can you just explain briefly what that is,
12 what's the connection with broadcasts with LMA?

13 MR. JACOBS: Well, what he is doing
14 under that agreement is, providing the
15 programming, the musical programming, for the
16 station.

17 JUDGE SIPPEL: Okay.

18 MR. JACOBS: And, it's a radio -- it's
19 an AM radio station. So, he's involved in radio
20 programming.

21 JUDGE SIPPEL: Okay. It's a field that
22 he knows, assumably.

23 MR. JACOBS: Yes.

24 JUDGE SIPPEL: Okay.

25 MR. JACOBS: You know, before his

1 licenses were revoked, he was the president and
2 main figure of five FM full-power radio stations.

3 JUDGE SIPPEL: Yes, I'm, generally,
4 aware of the fact that he was -- it's unfortunate
5 that he ran into this brick wall. But, I'm
6 trying to figure -- that's what I want to hear,
7 is how he's going to extricate himself.

8 Okay, well, you've answered that
9 question pretty well. But again, what kind of
10 evidence to show that he is rehabilitated? I
11 mean, you know, what he's done since he -- what
12 activities he's engaged in since he got out of
13 incarceration, he left incarceration.

14 But, he's -- is he -- well, let me put
15 it very directly to you. Are you offering
16 almost an affirmative defense that he's -- he
17 didn't have the capacity, that he was
18 incapacitated mentally at some point, because I
19 have them, I've read them. I mean, I read what
20 was given to me. I read a letter from a
21 psychiatrist, and I read a psychiatric report
22 that was in the application. And, I put you all
23 on notice that I was going to do that, I was
24 asking for it. It was sent to me by Mr. Bill
25 Skellet.

1 And so, this, in my mind this makes me
2 think, well, is this going to be an issue that we
3 are going to have to contend with, with evidence?

4 MR. JACOBS: We intend to have a
5 psychiatrist --

6 JUDGE SIPPEL: Okay.

7 MR. JACOBS: -- re-examine Mr. Rice,
8 and provide a report on his current mental
9 health, and prognosis for the future.

10 And, we haven't worked out all the
11 details yet about -- I'm not even positive who
12 that person will be. I know who I would like it
13 to be, namely, Dr. Stillings, who previously
14 examined Mr. Rice.

15 JUDGE SIPPEL: Okay. I hear you.

16 MR. JACOBS: I don't know whether he
17 will be willing to participate, whether he will
18 be willing to come to Washington, or that he will
19 be willing to be deposed.

20 But, I guess the best scenario we hope
21 for is that he will be willing to participate.
22 He will examine Mr. Rice. He will be deposed,
23 and he will come to Washington.

24 JUDGE SIPPEL: Now, what kind of a time
25 frame would you anticipate then, because I'm

1 thinking in terms of setting a hearing date. What
2 do you think, in terms of a time frame, or a time
3 line, how far out, at least how many months out.
4 Do you think there would be a way from having him
5 prepared to go, or some alternative psychiatrist?

6 MR. JACOBS: Well, that's one of the
7 main topics that Mr. Schonman and I have been
8 talking about.

9 JUDGE SIPPEL: Yes.

10 MR. JACOBS: And, I think he has
11 ventured that a period of five or six months
12 might be required to conduct discovery, including
13 the depositions and what not.

14 I rely on his judgment on amounts of
15 time, because he's been involved in a lot more
16 cases than I have.

17 MR. SCHONMAN: I could jump in here, if
18 you don't mind.

19 JUDGE SIPPEL: Yes, fine.

20 You don't mind -- I mean, do you mind?
21 I mean, I don't want to --

22 MR. SCHONMAN: What the Bureau was
23 anticipating is that we would certainly want to
24 do a request for admissions, followed by
25 interrogatories and document requests.

1 JUDGE SIPPEL: They can go out
2 promptly, though.

3 MR. SCHONMAN: Yes. And, depending
4 upon the responses we get, particularly, to the
5 interrogatories, we would schedule depositions to
6 the extent they are necessary.

7 We would anticipate that the Bureau
8 would retain a psychiatrist of its own to
9 evaluate the report that Mr. Rice's psychiatrist
10 develops.

11 And so, in addition to deposing Mr.
12 Rice's psychiatrist, I would assume that Mr.
13 Jacobs would want to depose the Bureau's expert
14 witness.

15 So, given the timing of
16 interrogatories and document requests, and I
17 don't know to what extent there might be motion
18 practice, if answers are not entirely responsive.
19 I would hope that -- I don't get the feeling that
20 that's going to be a problem.

21 JUDGE SIPPEL: That's like sending a
22 post card when you are on vacation. We know we
23 are going to see that.

24 MR. SCHONMAN: Yes.

25 JUDGE SIPPEL: A little bit.

1 MR. SCHONMAN: I would anticipate
2 probably more than six or seven months until we
3 have fleshed everything out. You know, the
4 hearing designation order, certainly, indicated
5 that there should be a thorough examination to
6 make sure that we've collected all the facts
7 necessary for you, Your Honor, to make a reasoned
8 determination on the issues.

9 So, we are thinking in terms of,
10 perhaps, a hearing date in the spring of 2015. We
11 are already up to -- almost up to July. We have
12 summer vacations coming up. We have Thanksgiving
13 holiday. Then, of course, the holidays in
14 December. That tends to get in the way.

15 And, I think there was some concern
16 about possible travel in the wintertime, either
17 from Missouri here, or out to Missouri, where
18 some of the witnesses might be.

19 In addition, as I understand it from
20 my discussions with Mr. Jacobs, there might be
21 character witnesses, perhaps, in the forms of
22 statements submitted --

23 JUDGE SIPPEL: Right.

24 MR. SCHONMAN: -- if I'm correct.

25 And, I know that Your Honor indicated

1 in an order that you preferred not to have
2 depositions of character witnesses. Certainly,
3 we'd like to have the opportunity, that is, the
4 Bureau would like to have the opportunity, to at
5 least speak with the witnesses, not, necessarily,
6 depose them, but at least have the opportunity to
7 flesh out any statements they may be intending to
8 submit into the hearing, into the record.

9 JUDGE SIPPEL: Okay. Well, yes. I
10 don't mind them being deposed, I just don't want
11 them to come -- I don't want them to appear as
12 witnesses, unless it's -- unless one side or the
13 other feels it's essential.

14 MR. SCHONMAN: Yes. Well --

15 JUDGE SIPPEL: I don't mind them being
16 deposed.

17 MR. SCHONMAN: -- understood. And,
18 the Bureau certainly has no intention of dragging
19 things out, and unnecessarily forcing people to
20 come and testify, when it's not necessary.

21 JUDGE SIPPEL: Well, it's the
22 inconvenience. I mean, they get agitated and
23 irritated if they are dragged in here for
24 testimony. And normally, I don't find that it's
25 necessary, but sometimes there's a letter that,

1 you know, it's an important, witness important
2 letter, that, yes, it becomes necessary.

3 MR. SCHONMAN: All that being said
4 then, I think what we would anticipate is a
5 hearing date some time in the spring, perhaps,
6 March, in that neighborhood.

7 JUDGE SIPPEL: Well, what's the date --
8 do you know, what's the date of the Game Show?
9 Austin, do you know?

10 MR. RANDAZZO: I don't know.

11 JUDGE SIPPEL: It's in the spring, I
12 think, of next year. I call that The Game Show.
13 They give us a schedule, and it's --

14 MR. SCHONMAN: I'm afraid I don't
15 remember the --

16 JUDGE SIPPEL: But, I know it's in the
17 -- I know it's next year, I would suspect it's
18 around the springtime. And, I'd like this done
19 before I start Game Show.

20 MR. SCHONMAN: All right. Again, I
21 don't the date of The Game Show schedule.

22 JUDGE SIPPEL: Well, you'll quickly
23 find out.

24 MR. SCHONMAN: And, I would anticipate,
25 too, based on my discussions with Mr. Jacobs,

1 that I think we are probably looking at a two-day
2 hearing in this case.

3 JUDGE SIPPEL: That sounds reasonable.

4 MR. JACOBS: One or two.

5 MR. SCHONMAN: Yes, relatively short.

6 JUDGE SIPPEL: And, really, the only
7 witness that's going to be -- the only extensive
8 cross examination is probably going to be the
9 psychiatric testimony.

10 MR. SCHONMAN: And, Mr. Rice.

11 JUDGE SIPPEL: And, Mr. Rice, of
12 course. Of course, yes, and Mr. Rice.

13 Now, are you offering your expert, you
14 don't have to give me a final answer on this, but
15 is it for the purpose of rebutting Mr. Rice's
16 psychiatrist? In other words, rebutting the
17 report, or is it doing an independent assessment
18 of Mr. Rice?

19 MR. SCHONMAN: The former. We have no
20 anticipation at this time that our expert witness
21 will conduct his or her own examination of Mr.
22 Rice.

23 At this point, it's our expectation
24 that our expert would evaluate Mr. Rice's
25 expert's report, either for the purpose of

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1 rebutting or corroborating the information in
2 that report.

3 JUDGE SIPPEL: You want a totally
4 independent assessment.

5 MR. SCHONMAN: Yes, and, certainly, we
6 are not expert in this area, in order to
7 adequately evaluate a psychiatrist's report. So,
8 we need our own psychiatrist to conduct that
9 evaluation of the report.

10 JUDGE SIPPEL: Well, after all, this
11 entire case that we've been involved in, maybe we
12 should be qualified.

13 Well, that sounds fine to me.

14 MR. JACOBS: Also, in choosing a date,
15 I'd like to remind the Court that the Passover
16 and Easter holidays occur at the beginning of
17 April.

18 JUDGE SIPPEL: I am hoping they can do
19 this before April.

20 MR. JACOBS: Well, hopefully.

21 JUDGE SIPPEL: Okay. I understand.
22 Yes, I'm aware of that. I'm, generally, aware of
23 that, but I haven't factored that in yet. But,
24 yes, we know they will, certainly, take that into
25 consideration.

1 MR. SCHONMAN: I will say, I've
2 discussed this previously with Mr. Jacobs, that
3 if we find that we've concluded discovery earlier
4 than we anticipated, we would ask Your Honor to,
5 perhaps, move up the hearing date, if it's
6 compatible with everyone's schedule.

7 But, right now we just don't know,
8 because we are just getting started with
9 discovery.

10 JUDGE SIPPEL: Well, but once -- I
11 think once you lock in a psychiatrist that the
12 respective sides are happy with, discovery should
13 move along pretty rapidly, I'm assuming. There
14 may be glitches, but we'll address those if they
15 come up. Okay.

16 Oh, the other issue -- well, that's
17 enough on that one, on the rehabilitation. And,
18 of course again, I'm not mentioning much about
19 the character witnesses, but just to repeat what
20 I've already said in the order and here, you
21 know, just don't inconvenience them anymore than
22 you have to. And, I will also act accordingly,
23 but if there's one that's really important, and
24 that I think I should, you know, examine his
25 demeanor, hear his demeanor, and testimony and

1 that kind of thing, we'll bring him in as a
2 witness. Okay.

3 Other documents, well that remains to
4 be seen.

5 MR. JACOBS: If we could back up, Your
6 Honor --

7 JUDGE SIPPEL: Sure.

8 MR. JACOBS: -- to Item 2, on the
9 question of stipulations. And, I'm not sure this
10 is, actually, a stipulation, but Mr. Schonman and
11 I were discussing it at length, where we thought
12 it would be an appropriate point for the --
13 chronologically, for the evidence of
14 rehabilitation to begin, keeping in mind that the
15 hearing designation order says that the presiding
16 judge is prohibited from re-litigating any of the
17 findings or conclusions of the previous hearing.

18 So, what we, I think, were kind of
19 getting to was selecting a date corresponding to
20 the beginning of Mr. Rice's incarceration, which
21 was September 30, 1994, on the theory,
22 theoretical theory, that rehabilitation begins
23 when the prison term begins.

24 JUDGE SIPPEL: Makes sense, that makes
25 sense to me.

1 Do you have any objection with that?

2 MR. SCHONMAN: I think it's,
3 preliminarily, I don't have a problem with that,
4 I think it's a matter which I would like to speak
5 more with Mr. Jacobs about. But, on theory, I
6 don't have a problem with that.

7 JUDGE SIPPEL: Well, what could be
8 wrong with that? I mean, you are right, when he
9 went to prison, when he would start his prison
10 sentence, or what he was convicted of doing that
11 was wrong, that's as logical a place to start
12 rehabilitation as any other time. Why would he
13 start rehabilitation a year later?

14 MR. SCHONMAN: Your Honor --

15 JUDGE SIPPEL: Because that, factually,
16 is what happened.

17 MR. SCHONMAN: -- I'm not saying I
18 disagree with that. I think it's just something
19 I'd like to talk more with my colleague, William
20 Skellet, about.

21 JUDGE SIPPEL: All right.

22 MR. SCHONMAN: And, we've been in
23 discussions, as Mr. Jacobs said. I think that
24 could very well be the operative date, but I
25 think it's something, if you don't mind, that we

1 --

2 JUDGE SIPPEL: No, no.

3 MR. SCHONMAN: -- could try to work
4 out among ourselves.

5 JUDGE SIPPEL: This is all preliminary.
6 No, I'm just trying to be a little bit helpful.
7 Okay. All right. That would be one stipulation.

8 Now, along the lines of that, I've got
9 a question or two.

10 Mr. Rice, wherever he resides, he has
11 to register as a sex offender, is that correct?

12 MR. JACOBS: That's correct.

13 JUDGE SIPPEL: And, what -- at what
14 level of sex offender is he registered as?

15 MR. JACOBS: In the materials that I
16 have seen, they don't provide the gradations that
17 you saw in the Titus case.

18 That said, they simply list the name
19 of the ex-con, and next to it a very, very brief
20 description of what the offenses were.

21 So, in Mr. Rice's case, there appear
22 to be three entries. And, one is -- it's
23 abbreviated, but meaning deviant sex assault,
24 second degree. And then, deviant sexual assault.
25 And, the third entry, sodomy.

1 JUDGE SIPPEL: That's not -- there's no
2 sodomy 1, 2 or 3, it's just sodomy?

3 MR. JACOBS: No.

4 JUDGE SIPPEL: All right. Now, what
5 state is he registered in?

6 MR. JACOBS: Missouri.

7 JUDGE SIPPEL: Missouri.

8 I think it's safe to say that all
9 states are different, but I thought this was kind
10 of a uniform thing. I know I've seen them in the
11 State of Delaware in a local paper, a rural
12 paper, where they have the person's name, but
13 they do list the class 1, 2 or 3, the class of
14 the offense. But, that doesn't mean,
15 necessarily, that Missouri has to do it that way.

16 MR. JACOBS: I haven't seen it. The
17 materials are rather complicated, repetitive, and
18 inconclusive.

19 JUDGE SIPPEL: Well, as I say, I don't
20 think that really -- that really is a major
21 concern here. It's more of a concern to the
22 public that's receiving the notice than it is,
23 really, to us here, as I see it. But, it's a
24 shorthand way of getting a feel for, you know,
25 how does the state look upon it, in terms of the

1 type of registration, or the publicity that they
2 give it.

3 So, this could be -- I'm going to
4 assume that this is pretty bad.

5 MR. SCHONMAN: Your Honor, I wanted to
6 add that, the areas involving his classification
7 as a registered sex offender, that and other
8 areas are avenues that we were intending to
9 pursue in discovery.

10 JUDGE SIPPEL: Okay.

11 MR. SCHONMAN: Document requests, as
12 well as interrogatories.

13 JUDGE SIPPEL: Thank you. No, I would
14 expect that, but I'm just trying to -- I'm just
15 trying to get an up-front feel for what -- for my
16 own understanding.

17 No, whatever you develop in discovery,
18 and whatever comes in at the trial will come in
19 at the trial.

20 Does he -- he has consistently
21 registered, in other words, there's never been
22 any missed -- he hasn't missed a date for
23 registration.

24 MR. JACOBS: Not to my knowledge, no.

25 JUDGE SIPPEL: Okay.

1 MR. JACOBS: And, the current report,
2 which I checked last night --

3 JUDGE SIPPEL: Yes.

4 MR. JACOBS: -- states compliant,
5 which means that he has done all the appropriate
6 registration.

7 JUDGE SIPPEL: And, does he have a
8 parole officer that he reports to?

9 MR. JACOBS: He is released from
10 parole.

11 JUDGE SIPPEL: Completed his parole.

12 MR. JACOBS: Completed his parole many
13 years ago.

14 JUDGE SIPPEL: All right. Okay. You
15 know, you've got some homework to do there.

16 Now, has there been any recurrence of
17 any of these -- of any crime involving sexual
18 deviation? Has there been -- in other words, has
19 he gotten another citation for doing something of
20 that nature, since he's gotten out of prison?

21 MR. JACOBS: To my knowledge, nothing
22 at all related to sex or anything else.

23 JUDGE SIPPEL: So, he's, basically,
24 putting it in a common clause, I mean, he's been
25 clean since he's gotten out of prison.

1 MR. JACOBS: Exactly. Exactly.

2 JUDGE SIPPEL: And, does he have his
3 alcoholic condition under control, his
4 alcoholism?

5 MR. JACOBS: To the best of my
6 knowledge, yes.

7 JUDGE SIPPEL: Okay.

8 MR. SCHONMAN: And again, these are all
9 areas that the Bureau would want to pursue.

10 JUDGE SIPPEL: All right, I realize
11 that. I realize that.

12 There's nothing --

13 MR. JACOBS: Let me just -- to improve
14 and clarify the question of parole, Mr. Rice
15 completed his parole in August, 2002.

16 JUDGE SIPPEL: Okay. So again, that's
17 quite some time ago. Okay.

18 And now, then you said that he's been
19 -- as far as being in the communications
20 business, he's been involved in creating
21 programming to be used by whatever station is
22 interested in his programming.

23 MR. JACOBS: Yes. He also helps in
24 engineering work. He is life certified as a
25 professional broadcast engineer. And, he is